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6 Attorney for Plaintiff,
NACIO SYSTEMS, INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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11 NACIO SYSTEMS, INC.) Case No.: C 07 3481 PJH
12 a Nevada corporation,)
13 Plaintiff) **DECLARATION OF BETZ BURKART IN**
v.) **SUPPORT OF :**
14)
15 HERBERT GOTTLIEB, an individual;) **1) PLAINTIFF'S APPLICATION WITHOUT**
SWIDENT, LLC, a California limited) **NOTICE FOR TEMPORARY RESTRAINING**
16 liability corporation,) **ORDER RE PRESERVING EVIDENCE ; AND**
17 Defendants) **2) PLAINTIFF'S SECOND APPLICATION**
FOR TEMPORARY RESTRAINING ORDER
18 RE COPYRIGHT INFRINGEMENT AND
19 SHORTENING TIME FOR LIMITED
20 DISCOVERY
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1 I, Betz Burkart, say:

2 1. I am currently employed by Nacio Systems, Inc (“Nacio”) as a GASP Project Lead
3 Engineer. Before that I was employed by Attest Systems as the Software Identification Database
4 Manager. I moved to Nacio when Herbert Gottlieb, Attest’s then president, sold the assets of Attest
5 to Nacio.

6 2. While employed at Attest I worked on maintaining the Software Identification
7 Database (“SID”) that is used by the GASP audit program suite to identify whether application
8 programs it finds on the systems being audited are in fact validly licensed or not. I perform similar
9 duties for Nacio. Both at Attest and at Nacio I worked with Herb Gottlieb on this and other tasks,
10 until Mr. Gottlieb left Nacio in early 2006.

11 3. The SID contains the information that identifies a particular application program as
12 validly licensed by the publisher. We create these records by examining the executable files in the
13 application for patterns of information that can be located by our software and matched against the
14 identifying record to confirm a valid license.

15 4. When I receive an unidentified executable record from one of our customers in the
16 audit output files they send us, I perform several tasks to determine if it is a licensed form of the
17 application program. These include verifying that the publisher of the software is a valid publisher,
18 that the application is a valid, licensable application, and to confirm the version number of the
19 submitted application.

20 5. I do this maintenance by reviewing the information in forms produced by the SQL
21 Master SID database itself. When I worked with Herb Gottlieb in doing this he always asked me to
22 export the information to Excel spreadsheets so he could review it, then I would update information
23 he modified into the Master SID.

24 6. After Mr. Gottlieb left Nacio in 2006, he spoke to me about coming to work with
25 him at PS’Soft, a large competitor of Nacio’s in the area of software audit applications. He
26 indicated that he had arranged a job for me in Salt Lake City (PS’Soft’s headquarters) and would
27 take \$20 per hour of my proposed \$55 per hour pay. I declined.

1 7. Later, in or about August 2006, I was invited to his residence at 10 Indian Trail
2 Court in Novato, California by his wife for a party. During that afternoon, he asked me to come up
3 to his home office so that he could show me the PS'Soft database project. He showed me four
4 computers, a laptop and three desktop models, all of which appeared identical to the Dell models
5 Nacio used . On those systems were Excel spreadsheets containing records identical in layout to the
6 Nacio SID excerpts that I had provided him in the past. The systems showed records for particular
7 alphabet ranges ((i.e. records with customers falling from A-G on one system, H-Q the next, and so
8 on.)

9 8. Mr Gottlieb told me that he was working to update, expand and correct the PS'Soft
10 database of records used by PS'Soft to identify valid licenses for applications by adding information
11 to it. He again asked me to work on the project by performing exactly the same research tasks
12 described above. He said that the PS'Soft database was much larger than Nacio's.

13 9. He said that he had been working with BIT, Nacio's software engineers in
14 Argentina, on the project, but that they had failed to meet the deadline, which was coming up that
15 week. He told me not to tell anyone at Nacio what he had told me, or else he would get in trouble.

16 10. The Excel spreadsheets that I had prepared for Mr. Gottlieb had the SQL database
17 contents arranged on the screen in fields, with field headings describing their contents above the
18 content itself. The screens I saw at Mr. Gottlieb's house used the identical field names as Nacio's
19 SID. I find it almost impossible to believe that PS'Soft had independently arrived at the exact same
20 field layout as was used by Nacio, even if their programs performed similar functions. As a result of
21 these facts, I left Mr. Gottlieb's house convinced that he was adding the Nacio SID to the PS'Soft
22 database.

23 11. I was asked by Carey Daly to investigate the Nacio computers to see whether there
24 was any evidence of Mr. Gottlieb taking company data prior to his departure. I located a ".zip" file
25 on the system that showed that Mr. Gottlieb had compressed the entire company customer data set
26 into a format suitable for transport. Only Mr. Gottlieb or myself had the passwords and permissions
27 to extract the customer data from the program that maintained it into the format I found. I did not do
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1 so. I concluded that the zip file had been created by Mr. Gottlieb and so informed Mr. Daly.

2 12. I have reviewed the material listed on the website for SWIdent, which describes
3 itself as offering customers the service of identifying program files listed as 'unidentified' after an
4 audit by the customer of their systems. It requests the customers send SWIdent copies of the
5 unidentified executables. If customers were to send SWIdent electronic copies of the executable
6 files listed as "unidentified" by any audit software other than GASP, or merely unknown to the
7 customers's technical teams, running GASP against those files would identify over 90% of those
8 files. GASP therefore would be of enormous help to Gottlieb's new company in trying to provide
9 the service advertised on its Website.

10 13. SWIdent also asks its customers to send in their executable files. This is necessary as
11 SWIdent is constructing a database of files on various systems, a key function for audit software.
12 The GASP SID contained approximately 70,000 records when Mr Gottlieb left in March 2006.
13 When I started working for Attest in 1997, the SID had approximately 15,000 records. By 2005 it
14 had 35,000. I worked on creating new SID records with four other programmers, of whom I was the
15 longest-term employee. The 70,000 records that existed when Mr. Gottlieb left in 2006 therefore
16 took approximately fourteen man-years of work to create.

17 14. I am very concerned about Mr.. Gottlieb's reaction to this lawsuit. In the past, he has
18 repeatedly demonstrated a terrible temper and a refusal to accept any limits on his conduct when he
19 is challenged or contradicted. In addition, he has in recent months begun calling and emailing the
20 help line, and refusing to accept my insistence that I cannot talk to him. On one occasion, after I
21 stopped accepting his phone calls and blocked his emails, he waited in his car for me outside of
22 work, and then pursued me down Highway 101. When I took side streets, he followed me there too.

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1 He did not stop following me until I went to a building where I knew there was a security guard, and
2 when I got out and went inside, he drove off. I am afraid of Mr. Gottlieb and his temper.

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4 I declare under penalty of perjury that the forgoing is true and correct andd that this
5 declaration was executed in Novato California on July ____, 2007

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8 Betz Burkart

Sent By: Nacio Systems ;

415 884 7502

; Jul-13-07 9:58AM;

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8 Betz Burkart
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BURKART DECLARATION RE TRO ETC
Nacio Systems, Inc. v. Herbert Gottlieb et al Case No.C 07 3481 PJH